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Attorneys for plaintiff
KENITRA RAE NEWMAN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KENITRA RAE NEWMAN,

Plaintiff,

vs

CIVIL NO.

COMPLAINT FOR DAMAGES
(CIVIL RIGHTS VIOLATION:
BATTERY BY POLICE OFFICER)

CITY OF OAKLAND, a
municipal corporation;
ERICA MCGLASTON, as a
CITY OF OAKLAND police
officer and individually;
and DOES 1 - 25, inclusive,

Defendants.

JURY TRIAL DEMANDED

INTRODUCTION

1. Plaintiff KENITRA RAE NEWMAN who is suing the CITY OF OAKLAND, and (former) Oakland police officer ERICA MCGLASTON, for violation of her civil rights. MCGLASTON, while on duty and in uniform, stalked NEWMAN and beat her, both with her fists and her police baton, without provocation, after NEWMAN terminated their friendship. The incident was investigated and MCGLASTON was terminated for her conduct and referred to the Alameda County District Attorney. The incident took place on

COMPLAINT FOR DAMAGES [CIVIL RIGHTS--POLICE UNLAWFUL FORCE]

ORIGINAL
FILED

JAN 16 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

ADR

08-00311

EMC

1 July 14, 2007 in Oakland, California.

2 JURISDICTION AND VENUE

3 2. The Court has jurisdiction over the action pursuant
4 to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1343(3)
5 (civil rights). Venue lies in the Northern District of
6 California, the judicial district in which the claim arose,
7 pursuant to 28 U.S.C. § 1391(b).

8 IDENTIFICATION OF PARTIES

9 3. Plaintiff KENITRA RAE NEWMAN ("NEWMAN") at all times
10 mentioned in this Complaint, and still is, a citizen of the
11 United States, a resident of Alameda County and of full age.

12 4. Defendant CITY OF OAKLAND ("CITY") is a public entity,
13 duly organized and existing under the laws of the State of
14 California. Defendant CITY OF OAKLAND includes the Oakland
15 Police Department. At all times material to this Complaint,
16 the OAKLAND Police Department was supervised, controlled and
17 staffed by defendant CITY OF OAKLAND, its officers, agents and
18 employees. By contract and statute, defendant CITY OF OAKLAND
19 is required to indemnify its law enforcement officers for acts
20 undertaken in their official capacity.

21 5. At all times material to this Complaint, defendant
22 ERICA MCGLASTON ("MCGLASTON") was a police officer employed by
23 the OAKLAND Police Department and committed the acts complained
24 of herein while acting under color of law. Committing the acts
25 of which the Plaintiff complains, defendant MCGLASTON exceeded
26 the authority vested in her as an OAKLAND police officer and as

1 an employee of the CITY OF OAKLAND. MCGLASTON is being sued in
2 both her official and individual capacities.

3 6. Plaintiff does not know the true names and capacities
4 of defendants DOES 1 through 25, and sues these defendants by
5 such fictitious names. Plaintiff is informed and believe and
6 thereon alleges that each defendant so named is responsible in
7 some manner for the injuries and damages suffered by plaintiff
8 as described in this Complaint. Plaintiff will seek leave to
9 amend her complaint to state the true names and capacities of
10 defendants DOES 1 through 25 when they become known to her. In
11 her references to "defendant" or "defendants" Plaintiff also
12 refers to defendants DOES 1 through 25.

13 7. At all times mentioned herein, each defendant was the
14 agent or employee of each of their co-defendants, and in doing
15 the things alleged herein, were acting within the course and
16 scope of such agency or employment, with the actual or implied
17 permission, consent, authorization and approval of their co-
18 defendants.

19 CLAIMS REQUIREMENT

20 8. Plaintiff is in compliance with the administrative
21 claim requirement under California law pertaining to suits
22 against public entities, with respect to pendent state claims.

23 FACTS GIVING RISE TO THE COMPLAINT

24 9. At about 1:00 a.m. on July 14, 2007, plaintiff left a
25 party at a friend's house, located at 4240 Tarabella Way in
26 Oakland, California, to retrieve a coat from her car. As she

1 walked down the street towards her car, she noticed a marked
2 police patrol car parked along the curb. As she proceeded, she
3 recognized the driver and sole occupant of the police car as
4 defendant ERICA MCGLASTON. MCGLASTON was in full uniform and,
5 as subsequently determined, on duty. NEWMAN was immediately
6 concerned and apprehensive because she had recently terminated
7 a friendship with MCGLASTON and knew her to have a volatile
8 temperament with a propensity towards abusive behavior. As a
9 result of that understanding, NEWMAN had maintained a policy of
10 having no contact with MCGLASTON.

11 10. As NEWMAN approached the patrol car, MCGLASTON called
12 out to her. NEWMAN continued walking towards her own car, at
13 which point MCGLASTON went after her on foot. When MCGLASTON
14 caught up to her, she grabbed and turned NEWMAN and punched her
15 full in the face. When NEWMAN saw that officer McGlaston was
16 reaching for the baton on her equipment belt she said "Please
17 don't hit me with that, Erica". McGlaston briefly paused but
18 as Newman attempted to walk away from McGlaston, heading back
19 towards the house and safety, McGlaston caught up to her and
20 struck her legs with her baton, causing Newman to fall to the
21 ground. As Newman, crying, began to push herself up from the
22 ground, McGlaston punched her in the mouth, splitting Newman's
23 lip and causing blood to pour down her face.

24 11. NEWMAN's absence from the party had been noted and
25 one of her friends went out to look for her, saw NEWMAN and
26 went to help her to her feet. MCGLASTON returned to her patrol

1 car, drove up to NEWMAN and her friend, and traded words with
2 NEWMAN's friend before driving away. NEWMAN cleaned her face
3 in the bathroom in the front entryway of the house. She and
4 her friend then left to obtain treatment for NEWMAN's injuries.
5 Her friend called someone at the party, advising that NEWMAN
6 had been accosted by MCGLASTON. Several persons at the party
7 were Oakland police officers. When they heard that MCGLASTON
8 had confronted NEWMAN on the street, and knowing MCGLASTON's
9 violent, unstable personality and history of abusive behavior
10 towards NEWMAN, were fearful that MCGLASTON had abducted NEWMAN
11 and being out of control might actually murder NEWMAN. Two of
12 these persons, an officer and a police lieutenant, initiated a
13 search for MCGLASTON, and with the assistance of the OAKLAND
14 police dispatcher, located McGlaston who was had responded to a
15 call and was still at that location. They satisfied themselves
16 that MCGLASTON had not taken NEWMAN from the incident site or
17 knew of NEWMAN's current whereabouts. NEWMAN was later advised
18 to obtain a restraining order to keep officer MCGLASTON away
19 from her. MCGLASTON was terminated from the OAKLAND Police
20 Department subsequent to an OAKLAND Police Department internal
21 investigation and a referral was made to the Alameda County
22 District Attorney for consideration of criminal prosecution.

23 DAMAGES

24 12. MCGLASTON's conduct constitutes sexual harassment and
25 intimidation through force and violence. Her conduct, shocking
26 to the conscience of the community, was an abuse of defendant's

27 COMPLAINT FOR DAMAGES [CIVIL RIGHTS--POLICE UNLAWFUL FORCE]
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1 authority, under color of law, to harass, intimidate, assault
2 and batter Plaintiff, all in violation of her civil rights.

3 13. Plaintiff KENITRA NEWMAN was physically, emotionally
4 and financially injured and damaged as a proximate result of
5 defendant's conduct. Plaintiff has also suffered violation of
6 her constitutional rights and the loss of her sense of security
7 and dignity as a citizen and resident of the United States of
8 America.

9 14. The conduct of defendant MCGLASTON was malicious,
10 wanton and oppressive. Plaintiff is therefore entitled to an
11 award of punitive damages against MCGLASTON.

12 15. Plaintiff found it necessary to engage the services
13 of private counsel to vindicate her rights under the law and to
14 reclaim that which was stripped away from her by MCGLASTON's
15 physical and emotional battery. Plaintiff is entitled to the
16 recovery of all attorney's fees and costs incurred in relation
17 to this action.

18 WHEREFORE, plaintiff prays for relief as hereinafter set
19 forth.

20 FIRST CAUSE OF ACTION

21 (42 U.S.C. § 1983: VIOLATION OF
22 CIVIL RIGHT TO SECURITY OF PERSON)

23 16. Plaintiff incorporates by reference all allegations
24 set forth in paragraphs 1 - 15, inclusive, as if the same were
25 repeated and realleged at length and in full.

26 17. Defendant ERICA MCGLASTON acted under color of law in
27 stalking and beating plaintiff without lawful justification,
28 COMPLAINT FOR DAMAGES [CIVIL RIGHTS--POLICE UNLAWFUL FORCE]

1 subjecting NEWMAN to unlawful force, thereby depriving
2 plaintiff of certain constitutionally protected rights,
3 including, but not limited to:

4 a. The right not to be deprived of life or liberty
5 without due process of law, as guaranteed by the fifth and
6 fourteenth Amendments to the United States Constitution;

7 b. The right to be free from the use of excessive use of
8 force by law enforcement officers, as guaranteed by the fourth,
9 fifth and fourteenth Amendments to the United States
10 Constitution; and,

11 c. The right to be free from preconviction punishment as
12 guaranteed by the fourth, fifth and fourteenth Amendments to
13 the United States Constitution.

14 18. As a proximate result of the foregoing wrongful acts
15 of defendant, plaintiff has sustained, and will in the future
16 sustain, pecuniary loss and other compensable injuries.

17 19. In doing the foregoing wrongful acts, defendant acted
18 in reckless and callous disregard for the constitutional rights
19 of plaintiff. The wrongful acts were willful, oppressive and
20 malicious.

21 Wherefore, plaintiff prays judgment as hereinafter set
22 forth.

23 SECOND CAUSE OF ACTION

24 (Violation of Civil Rights under State
25 of California law: Civil Code section 52.1)

26 20. Plaintiff incorporates by reference all allegations
27 set forth in paragraphs 1 - 19, inclusive, as if the same were
28 COMPLAINT FOR DAMAGES [CIVIL RIGHTS--POLICE UNLAWFUL FORCE] 7

1 repeated and realleged at length and in full.

2 21. Defendants interfered with the constitutional rights
3 of plaintiff as alleged, by means of intimidation, coercion and
4 implicit threat.

5 22. Under the provisions of California Civil Code section
6 52(b), defendant MCGLASTON is liable for each and every offense
7 for exemplary damages, for statutory penalties of \$25,000 in
8 addition thereto, and for the payment of plaintiff's attorney
9 fees, all in addition to her general damages.

10 WHEREFORE, plaintiff prays for relief as hereinafter set
11 forth.

12 THIRD CAUSE OF ACTION

13 (False Imprisonment)

14 23. Plaintiff incorporates by reference all allegations
15 set forth in paragraphs 1 - 22, inclusive, as if the same were
16 repeated and realleged at length and in full.

17 24. Defendant restrained plaintiff and held her against
18 her will, without probable cause to believe that plaintiff had
19 committed an unlawful act, and without any right at all.

20 25. As a proximate result of the defendant's wrongful
21 conduct, plaintiff suffered damages as set forth herein.

22 WHEREFORE, plaintiff prays for relief as hereinafter set
23 forth.

24 FOURTH CAUSE OF ACTION

25 (Intentional Infliction of Emotional Distress)

26 26. Plaintiff incorporates by reference all allegations

27 COMPLAINT FOR DAMAGES [CIVIL RIGHTS--POLICE UNLAWFUL FORCE]
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1 set forth in paragraphs 1 - 25, inclusive, as if the same were
2 repeated and realleged at length and in full.

3 27. The conduct of the defendant as set forth herein, was
4 extreme and outrageous and not be tolerated in a democratic and
5 civilized society. In order to deliberately injure plaintiff
6 the defendant committed the referenced extreme and outrageous
7 acts with the intent to inflict severe mental and emotional
8 distress upon plaintiff.

9 28. As a proximate result of the defendant's wrongful
10 conduct, plaintiff suffered severe emotional distress.

11 WHEREFORE, plaintiff prays for relief as hereinafter set
12 forth.

13 FIFTH CAUSE OF ACTION

14 (Assault and Battery)

15 29. Plaintiff incorporates by reference all allegations
16 set forth in paragraphs 1 - 28, inclusive, as if the same were
17 repeated and realleged at length and in full.

18 30. MCGLASTON made plaintiff fearful of immediate death
19 and severe bodily harm by attacking and battering her without
20 any just provocation or cause. MCGLASTON committed assault and
21 battery against plaintiff by manhandling her, punching her in
22 the face, striking her with an impact weapon (police baton) and
23 through the use of verbal intimidation.

24 31. Defendant's conduct was neither privileged nor
25 justified under statute or common law.

26 32. As a proximate result of the defendants' wrongful
27

1 conduct, plaintiff suffered physical, emotional and financial
2 injury and damage.

3 WHEREFORE, plaintiff prays for relief as hereinafter set
4 forth.

5
6 SIXTH CAUSE OF ACTION

7 (Negligence)

8 33. Plaintiff realleges and incorporates by reference all
9 allegations set forth in paragraphs 1 - 32, inclusive, as if
10 the same were repeated and realleged at length and in full.

11 34. At all times mentioned, defendants had a duty to
12 plaintiff to exercise reasonable care in the performance of
13 their duties as police officials.

14 35. Defendants failed to comply with said standard of
15 reasonable care, proximately causing plaintiff to suffer injury
16 and damage.

17 WHEREFORE, plaintiff prays for relief as hereinafter set
18 forth.

19 SEVENTH CAUSE OF ACTION

20 (42 U.S.C. § 1983 MUNICIPAL LIABILITY)

21 36. Plaintiff realleges and incorporates by reference all
22 allegations set forth in paragraphs 1 - 35, inclusive, as if
23 the same were repeated and realleged at length and in full.

24 37. Defendant CITY OF OAKLAND has, at all times mentioned
25 herein, had a mandatory duty of care to properly train, retain,
26 supervise, investigate and discipline defendant police officers
27 so as to avoid unreasonable risk of harm to citizens.

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1 38. Defendant CITY OF OAKLAND, by and through its
2 supervisory officials and employees, has been given notice of
3 constitutional violations and practices by defendant MCGLASTON
4 consisting of the use of unnecessary and excessive force and
5 intimidation.

6 39. Despite this notice, defendant CITY OF OAKLAND has
7 demonstrated indifference to MCGLASTON's conduct by failing to
8 take necessary appropriate or adequate measures to prevent its
9 continuation, thereby breaching its duty of care to citizens.

10 40. Defendants' failure to comply with said standard of
11 reasonable care proximately caused plaintiff to suffer injury
12 and damage.

13 WHEREFORE, plaintiff prays for relief as hereinafter set
14 forth.

15 EIGHTH CAUSE OF ACTION

16 (Respondeat Superior Against CITY OF OAKLAND)

17 41. Plaintiff realleges and incorporates by reference all
18 allegations set forth in paragraphs 1 - 40, inclusive, as if
19 the same were repeated and realleged at length and in full.

20 42. Defendant MCGLASTON committed the acts described
21 above while acting within the course and scope of employment as
22 a police officer for the CITY OF OAKLAND.

23 43. Defendant CITY OF OAKLAND is therefore liable under
24 all causes of action set forth herein for the injuries and
25 damages suffered by plaintiff under the doctrine of respondeat
26 superior.

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1 WHEREFORE, plaintiff prays for relief as hereinafter set
2 forth.

3 DEMAND FOR JURY TRIAL

4 Plaintiff demands a trial by jury in this action.

5 PRAYER

6 WHEREFORE plaintiff prays for relief as follows:

- 7 1. For special damages according to proof;
8 2. For general damages in the amount of \$1,000,000;
9 3. For punitive damages against ERICA MCGLASTON
10 according to proof;
11 4. For exemplary damages and additional penalties
12 in the amount of \$25,000 for every violation by defendant, and
13 against plaintiff, of Civil Code section 52.1;
14 5. For the payment of reasonable attorney fees;
15 6. For costs of suit; and
16 7. For such other and further relief as the Court
17 may deem just and proper.

18
19 Dated: January 16, 2007 LAW OFFICES OF JOHN L. BURRIS

20
21 By: John L. Burris
22 John L. Burris, Esq.
23 Attorney for plaintiff
24 KENITRA RAE NEWMAN
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